

PLANNING COMMISSION MINUTES

MARCH 2, 2006

NEW BUSINESS:

Public Hearing and Consideration of Cases

DOCKET NO. 9-72-05 & JPOP -4-05

Change in zoning from C-1 Commercial to C-2 Commercial, a Joint Parking Agreement to share 8 parking spaces between the two uses on the lot, and a Joint Parking Agreement to share 12 spaces on an adjacent site, on property located at 1765 Mellwood Avenue and 1733 Brownsboro Road (Tax Block 88F, Lots 6, 7, 9), containing 0.388 acres and being in Louisville Metro.

Project Name:	L&N Wine Bar and Bistro
Owners:	Douglas and Peggy Wheeler 131 N. Spring Street Louisville, Kentucky 40206
Applicant:	The Houston Group, Inc. Houston D. Jones 1401 N. Buckeye Lane Goshen, Kentucky 40026
Existing Uses:	Restaurant/Bar with indoor dining only, Offices, Apartment
Proposed Use:	Restaurant/Bar with indoor and outdoor dining, Offices
Council District:	9 – Tina Ward-Pugh
Staff Case Manager:	Aliza Tourkow, Planner II

Notice of this public hearing appeared in **The Courier Journal** on February 9, 2006, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

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The following spoke in favor of this request:

Sherie Long, 4501 Bardstown Road, Louisville, Kentucky 40218; who submitted a booklet with various photographs.

Len Stevens, 1611 Shady Lane, Louisville, Kentucky 40205.

Houston Jones, 1401 N. Buckeye Lane, Goshen, Kentucky 40026.

The following spoke in opposition:

No one.

Interested Parties:

Dolores Collins, 2904 Lindsay Avenue, Louisville, Kentucky 40206.

SUMMARY OF TESTIMONY OF PROPONENTS:

Sherie' Long, with ClasSickle, said she is representing the client, Houston Jones and the L & N Wine Bar and Bistro owners Len and Nancy Richards. Dolores Collins, President of the Clifton Heights Community Council, is also present and in support of the proposal.

Ms. Long discussed the exhibits she submitted, stating that one exhibit shows the on-street and off-street parking in relationship to the existing buildings in the area, and the other exhibit shows the amount of green space, existing landscaping, and mature tree canopy that exists on the site.

She said the L & N Wine Bar and Bistro is located at the intersection of Brownsboro Road and Mellwood Avenue at a business node in the Traditional Marketplace Corridor where a mixture of uses are encouraged. This area has a variety of businesses with residential houses located on the perimeter. Parking is located both on and off the street, with most residences parking on the street. Tina Ward Pugh, councilwoman for the district, e-mailed staff prior to the LD&T meeting to state that striping for on-street parking spaces is scheduled for this spring and money has been set aside for the work to be done. When the striping

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is complete, the on street parking spaces will be more utilized by the residences and the patrons of the local businesses.

Ms. Long said that L & N Wine Bar and Bistro has an on-site parking lot with 19 parking spaces. There are 8 on-street parking spaces adjacent to the property, and the applicant is negotiating an off-site parking agreement with the manufacturing facility across the street at 1747 Mellwood Avenue. All of these locations will provide the total parking required by the LDC. Because the Manufacturing facility's operating hours do not overlap the restaurant's hours, their parking spaces will be available for a joint parking agreement without needing a parking study.

Stiglitzs Manufacturing has 22 spaces total in two areas on their property at 1747 Mellwood Avenue. The spaces adjacent to Beargrass Creek will need to be re-stripped because the existing striping has faded. She said if the Stiglitzs owners are not able to provide the 12 spaces needed to fulfill the required parking, a different option is to acquire an agreement with the auto repair shop just across the street. There is a meeting this afternoon to discuss final details for the joint parking with the manufacturing facility.

She said the existing landscaping provides a large number of mature trees and several newly planted trees, which when mature will be more than adequate to provide shade and help reduce the heat island effect.

She said the existing landscaping in front of the office building will be cleaned of debris, re-mulched, and maintained at the same level as the plantings around the restaurant. It is a small area, but will provide a big impact when kept weeded and trimmed.

Ms. Long asked the Commissioners to look at the pictures in the booklet she provided. She said she has included pictures taken earlier in the year when the trees were in leaf, showing the existing extensive landscape improvements completed by the Richards. The building containing the wine bar is a historic house converted into a restaurant. The applicant agreed to a binding element to not change the façade or character of the building. She said other pictures included show the proposed outdoor dining area separated from the street by landscaping and a white picket fence. The existing sign will be relocated out of the Right-of-Way. The overall site is a very attractive site and the owners have a

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steady business with the peak operating hours being Thursday, Friday and Saturday. There are several views of the existing patio area provided in the booklet, including the parking lot, perimeter planting, and location of joint parking across the street. Ms. Long stated that she hoped the pictures show that the Richards have provided more than the LDC code requires concerning landscaping and aesthetics. The proposed outdoor dining area is currently being used as a waiting area for the restaurant.

Ms. Long said that there is no new construction proposed - her client only wants to be able to provide patrons with an outdoor dining area to allow consumption of alcoholic beverages. They have agreed to all the suggested binding elements. The applicant also agreed to a binding element limiting the outdoor patio dining to 1:00am.

Houston Jones said L & N 's patrons are not a young group, but instead an older group in the thirty to fifty age range. There should not be any typical bar room actives where young people are loud and out of hand, their typical patrons are a more subdued lot. There will not be any outdoor music or entertainment and the hours of operation of the outdoor dining area has been limited to 1:00am. The clients have signed and agreed to the binding elements, which enforce these previsions. The adjacent property is separated from the restaurant property by a fence and landscaping. The Richards have provided a place for a nice dining experience and good conversation. Mr. Jones supports the zoning change so that the Richards can serve alcoholic beverages on the patio.

Len Richards, owner of L&N Wine Bar and Bistro, said he and his wife own the restaurant, which is leased from the Wheelers. He said they have provided extensive landscaping around the proposed outdoor dining area and provided an attractive outdoor space for patrons to use. He said currently the zone they are in provides them the ability to dine outside, but not to serve wine or other alcoholic beverages, which has been a hindrance to their business. He said they would appreciate the approval of this request so they can provide these services in the outdoor space to their patrons. He said they have agreed to all the binding elements.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke in opposition.

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SUMMARY OF TESTIMONY OF INTERESTED PARTIES:

Dolores Collins, Clifton Heights Neighborhood Council President, said she is pleased that the Richards have done such a good job with the property. She said their neighborhood council is glad to support this proposal. The Richards have agreed to the few binding elements limiting the use of the property, not to change the historic character of the façade, and limiting the hours of the outdoor dining. She said she is proud of all the work and effort they have put into the community. Ms. Collins asked that the Commission approve this request for the change in zoning from C1 to C2. She said the Clifton Heights Neighborhood Council is happy to have businesses like L&N Wine Bar & Bistro in the neighborhood.

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the March 2, 2006 public hearing proceedings.

In a business session subsequent to the public hearing on this request, the Commission took the following action.

On a motion by Commissioner Hamilton, the following resolution was unanimously adopted:

WHEREAS, The Commission finds that based upon testimony and evidence submitted during the public hearing, Land Development and Transportation Committee review, the staff report and the file of the case that the subject property located at 1765 Mellwood Avenue and 1733 Brownsboro Road and lies in the Traditional Marketplace Corridor Form District (TMC), which encourages and promotes development within marketplace corridors. This reinforces the corridor's function and identity, encourages alternative modes of travel, ensures compatibility with adjacent neighborhoods, and affords adequate and appropriate vehicular parking opportunities along the corridor to minimize spillover on adjacent residential streets. The TMC form district also encourages a mix of uses for the location at nodes of higher intensity and medium intensity between nodes along the corridors in order to promote a variety of uses. The variety of uses in this area contributes to the Traditional Market Place Corridor. The

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restaurant is located in a historic two-story house built in the late 1800's. The second building located on the site is a one-story house built in the late 50's or early 60's converted to an office building. The mass and scale of the two buildings fit nicely into the surrounding neighborhood, which has a variety of buildings, one and two-story single-family homes, large two-story apartment buildings, low one-story businesses and several large-scale manufacturing facilities. There is an existing paved parking lot in the rear of the restaurant, which is shared with the office building. Mature trees line the back edges of the parking lot and newer tree and shrub plantings buffer the front parking lot from the street. An existing 6 to 8 foot solid wood screen fence separates the single-family residence from the restaurant on the north side of the property. The restaurant is located on the existing transit route. There is an existing TARC stop on the corner in front of the restaurant. An existing 5 to 6

feet sidewalk lines the two street sides of the property. The existing crosswalk is signaled with sight-impaired pedestrian crosswalk equipment at all four crossings. The restaurant has provided access from the patio area and front entrance to the existing sidewalks with a wide internal sidewalk. On-street parking is available along Mellwood Avenue and Brownsboro Road on both sides of the street. The on-site parking lot will be shared by the office building and the restaurant, plus parking spaces in an off site parking lot will be shared by the restaurant and another business; and

WHEREAS, the Commission finds that the application further complies with the intent of Guideline 1 of the Cornerstone 2020 Comprehensive Plan because the proposal is a use on property already located within the Traditional Marketplace Corridor Form District where the pattern of development is distinguished by a mixture of low to medium intensity uses such as neighborhood-serving shops, small specialty shops, restaurants, and services. The subject property is located on an existing transit route at the corner of two major roadways, Mellwood Avenue and Brownsboro Road. This property is currently zoned C1 and surrounded on the east by C1, on the south by M2, on the west by M3, and on the north by C1. The adjacent properties have a variety of uses and intensities; to the east across the street is a bar and grill, Rush Inn; to the south is a car repair shop, Baumer Auto Repair, and a large manufacturing facility, Stiglitz Corporation; to the west is the Beargrass Creek and the MSD pumping station; and to the north is a single family residences. The subject property contains two buildings. The smaller one story building, set close to the road, is a general office building with storage in the basement and the larger two-story building is the L & N Wine Bar and Bistro on the first floor, the restaurants accounting office, and storage on the second floor. The mixed use of buildings is common in the

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Traditional Marketplace Corridor. A shared off street parking lot is provided, plus the site has mature existing trees. All the above mentioned demonstrates that the subject property complies with Guideline 1, Policy B.7; and

WHEREAS, the Commission further finds that the application complies with the overall intent of Guideline 2, Centers and specifically Policies 1, 2, 7, 11, and 13 of the Cornerstone 2020 Comprehensive Plan for all the reasons listed above and because the Traditional Marketplace Corridor promotes local activities centers. The subject property meets both policies 1 and 2 by being located at an intersection and activity center and being a non-residential mixed use development. Policy 7 is meet because the L & N Wine Bar and Bistro is located in a historic house, built in the 1800's, converted to a restaurant with several additions being added to the rear of the original structure. The second building on the property has also been converted from a single family home to an office building and storage. The subject property meets Policies 11, and 13. Policy 11 encourages locating centers nearby residential area. The subject property is located south and west of residential areas containing a mix of single and multi-family residences. Policy 13 encourages developments to share entrances and parking facilities to reduce the number of curb cuts and amount of surface parking. This development meets these policies because the two building share the parking lot and entrance limiting the curb cuts and amount of paving; and

WHEREAS, the Commission finds that the application further complies with the intent of Guideline 3, Compatibility and specifically Policies 7, 8, 9, 12, 21, 22, 24 and 28. The subject development meets Policy 7 because there will not be an outside sound system, or any outdoor performances. The proposed outdoor dining area will be for dining only and should not generate excessive noise. Any lighting provided by the subject property will be directed down and away from the sky, road and adjacent residences as directed by Policy 8, therefore, not affecting the residential properties in the area or the drivers using the roadways. The subject property is not proposing any new construction. The existing patio area proposed for outdoor dining is landscaped with shrubs and trees separating the dining area from the road and street. These plantings along with the existing large trees along the north and west property lines, along the parking area fronting the street, and the planting in front of the office building enhance the site and provide a pleasant visual character which fits into the spirit of the neighborhood as is promoted in Policy 9. The subject development meets Policy

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12, which promotes accessibility. A handicap parking space is provided in the on-site paved parking lot, and the restaurant and proposed outdoor dining area are both accessible to the mobility impaired. Policy 21 and 22 promotes appropriate transition between uses with landscaped buffer yards, compatible building design and materials, height restrictions and setback requirements. The subject property is setback from the road the same distance as the adjacent residence to the north. There is a 6-8 feet solid wood fence between the restaurant and the residence, which adds to the existing vegetation buffer. Landscape plantings and a low picket fence are located along the front and side of the restaurant, which provides a separation from the roadway and sidewalk. These plantings also provide a visual buffer to filter out the noise and headlights from the road and the views of the existing car lot and larger buildings on the opposite side of the road. The subject development meets Policy 24, which minimizes adverse impacts from the noise, lights, and other potential impacts. Ensures that parking, loading and delivery is adequate and convenient for motorists and does not negatively impact nearby residents or pedestrians. The subject property's parking lot is located in the rear of the two buildings. Existing large mature trees buffer the residence to the north from the parking area and existing shrub and tree plantings buffer the parking area from the street. The location of the parking is adjacent to the buildings and convenient to the customers. Additional on-street parking spaces are available on Mellwood and Brownsboro Road. A parking study was conducted to determine the parking demand. The study concluded there are adequate parking spaces available even during peak periods; therefore, the residences will not be adversely impact by the on street parking. The subject property complies with Policy 28, which promotes signage that conforms and is compatible with the form district. The existing signage is an attractive lighted monument style sign located on the corner of the property adjacent to the intersection. The sign is located out of the sight lines of the intersection and fits with the style of the other existing signage in the neighborhood; and

WHEREAS, the Commission finds that the application further complies with the intent of Guideline 7, Circulation and specifically Policies 1, 2, 3, 4, 5, 9, 10, 13, and 16. The subject property complies with Policy 1, 2, 5, and 9 which ensures that the development has adequate services, does not adversely affect the air quality, and there is adequate road systems and right of way. The Air Pollution Control Board has determined that the proposed development will not contribute or adversely affect the air quality. The Metro Public Works has reviewed the plan

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and determined that the right of away and site access is safe and adequate. The subject development is on a transit route and has a transit stop on the front corner. Bike Parking is proposed for two long term and four short term spaces. Sidewalks are located along the street and crosswalks are signalized for the blind. All of these items comply with Policy 3 and 4, which promotes the use of alternate forms of transportation and promotes the use of mass transit and pedestrian access. On-street parking is available along Mellwood Avenue and Brownsboro Road on both sides of the street. There are approximately 101 on-street parking spaces available within 500' of the restaurant and 19 spaces available in the on-site paved parking lot, bringing the total spaces available to 120. A parking study was performed to determine the parking demand for the study area. This study was performed over a three-day period by doing an hourly count of parked vehicles within the 500 feet study limit. The study determined 45% of the total parking spaces were occupied during peak periods, leaving 55% of the spaces available. Therefore, considering these items the subject property meets the intent of Policy 10. Policies 13 and 16 promote joint access and circulation systems for development sites comprised of more than one building site. The subject development meets this policy because the two buildings share parking and the access entrance to Brownsboro Road; and

WHEREAS, the Commission finds that the application further complies with the intent of Guideline 8, Transportation Facility Design and specifically Policies 11. The subject development meets the intent of Policy 11, which promotes functional internal circulation. The subject development has sidewalks internally and along the edge of the site, which connect the existing on street and on site parking to the restaurant and office building. In addition, these sidewalks connect the neighborhood to the development; and

WHEREAS, the Commission finds that the application further complies with the intent of Guideline 9, Bicycle, Pedestrian and Transit and specifically Policies 1, and 3. The subject property meets Policy 1 and 3, which promotes the use of alternate transportation and the use of pedestrian facilities. The subject development is proposing to provide bike parking spaces. The development is located on a transit route and has a transit stop on the front corner. The subject property has outdoor benches and is proposing to provide outdoor seating for dining. All of these facilities meet the intent of the policy; and

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WHEREAS, the Commission finds that the application further complies with the intent of Guideline 13, Landscape Character and specifically Policies 1 and 5. Policy 1 and 5 promote the uses of native plant material and preserve existing mature trees. Both of these Policies are being met in the subject development because no construction is proposed so therefore, all existing plant material will be preserved. The existing mature trees are several different native and naturalize species including Elms, Mulberry, Holly and Catalpa; and

WHEREAS, the Commission finds that the application further complies with the intent of Guideline 14, Infrastructure and specifically Policies 2, 3, 4 and 7. This subject property meets policies 2, 3, 4 and 7 because the development has adequate utility services of electric, gas, water and sewer all located within required in easements. The property is currently served by Louisville Gas and Electric, and Louisville Water. Sanitary sewers are provided by MSD and existing easements are provided as required by all utilities; and

WHEREAS, The Commission finds that the proposal has received preliminary approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Department of Public Works, and the Metropolitan Sewer District; and

WHEREAS, The Commission finds the proposal to be in conformance with all other applicable guidelines of the Comprehensive Plan; now, therefore, be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative council of the Louisville/Jefferson County Metro Government that the change in zoning **from C-1 Commercial to C-2 Commercial** on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Hamilton, Abstain, Adams, Queenan, Jones, Wells-Hatfield and Howard.

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners Ernst and Carlson.

ABSTAINING: No one.

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DETAILED DISTRICT DEVELOPMENT PLAN

On a motion by Commissioner Hamilton, the following resolution was unanimously adopted:

RESOLVED, That the Louisville Metro Planning Commission does hereby **APPROVE** the district development plan **SUBJECT** to the following binding elements:

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The residential character of Building One shall be maintained. Changes to the following items shall not be made without prior approval of the Planning Commission's designee:
 - a) roof line
 - b) building material
 - c) porch
 - d) windows
3. The development shall not exceed 2,976 square feet of gross floor area for office use in Building Two and 5,345 square feet of gross floor area for restaurant use in Building One (817 square feet of which shall be outdoor dining and alcoholic beverage sales and consumption).
4. Signs shall be in accordance with Chapter 8 and as presented at the public hearing (40 square feet in area and 5 feet tall).
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.

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6. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
7. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
8. If a certificate of occupancy is not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
9. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
10. There shall be no outdoor music (live, piped, radio or amplified), outdoor entertainment, or outdoor PA system audible beyond the property line.

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11. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
12. The materials and design of existing structures shall be substantially the same as depicted in the photographs as presented at the March 2, 2006, Planning Commission meeting.
13. At the time a certificate of occupancy is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
14. A legal instrument (Joint Parking Agreement) providing for the long-term shared use of 8 parking spaces on the rezoning site, as shown on the approved general district development plan and in accordance with Section 9.1.6 Joint Use Parking, shall be submitted by the applicant, approved by the Planning Commission legal counsel, and recorded in the County Clerk's office. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services. Transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument. Annual re-certification is required.

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15. A legal instrument (Off-Site Parking Agreement) providing for the long-term use of the 12 off-site parking spaces, ~~located at 1747 Mellwood Avenue,~~ as shown on the approved Joint Parking/Off-Site Parking Plan and in accordance with Section 9.1.5 Off-Site Parking, shall be submitted by the applicant, approved by the Planning Commission legal counsel, and recorded in the County Clerk's office. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services. Transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument. Annual re-certification is required.
16. Directional style or attached signage is required on the rezoning site parking lot and the off-site parking lot at ~~1747 Mellwood Avenue~~ stating that parking is permitted on both lots 7 days per week from 5:00 pm to 1:00 am. Placement of the signage must be approved by staff.
17. The property is restricted from the following uses: auto repair business, auto sales business, bingo hall, and cell tower.
18. All outdoor activities, including dining, shall cease at 1:00 am.
19. All 12 parking spaces to be jointly used off-site shall be re-stripped to delineate vehicular parking spaces within 30 days of legislative body approval.

All binding elements and/or conditions of approval listed above are accepted in total without exception by the entity requesting approval of this (these) development item(s).

The vote was as follows:

YES: Commissioners Hamilton, Abstain, Adams, Queenan, Jones, Wells-Hatfield and Howard.

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners Ernst and Carlson.

ABSTAINING: No one.

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JOINT PARKING AGREEMENT

On a motion by Commissioner Hamilton, the following resolution was unanimously adopted:

WHEREAS, the Commission finds that the applicant has demonstrated that the joint parking agreement for 8 spaces between 1765 Mellwood Avenue and 1733 Brownsboro Road meets the requirements of the Land Development Code Section 9.1.6 because the peak hours of operation for the two uses do not conflict, the joint parking spaces are located within 500 feet of both uses, the applicant has agreed to post signage identifying the parking spaces that will be jointly used, and the applicant has agreed to execute a joint parking agreement to the satisfaction of Planning Commission legal counsel; and

WHEREAS, the Commission finds that the applicant has demonstrated that the joint parking agreement for 12 spaces off-site in a location approved by Planning and Design Services staff meets the requirements of the Land Development Code Section 9.1.6 provided the peak hours of operation for the two uses do not conflict, the joint parking spaces are located within 500 feet of both uses for customer spaces, and 1000 feet for employee spaces, because the applicant has agreed to post signage identifying the parking spaces that will be jointly used, and the applicant has agreed to execute a joint parking agreement to the satisfaction of Planning Commission legal counsel; now, therefore, be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **APPROVE** the joint parking agreements filed in Docket No. 9-72-05 and JPOP-4-05.

The vote was as follows:

YES: Commissioners Hamilton, Abstain, Adams, Queenan, Jones, Wells-Hatfield and Howard.

NO: No one.

NOT PRESENT FOR THIS CASE: Commissioners Ernst and Carlson.

ABSTAINING: No one.

**PROPERTY DESCRIPTION
FOR
ZONE CHANGE**

**L & N Wine Bar and Bistro
1765 Mellwood Ave/ 1733 Brownsboro Road
Louisville, KY 40206**

Beginning at a 5/8" rebar with cap LS 2206 set at the intersection of the north right of way of Mellwood Avenue and the east right of way of Brownsboro Road, said total widths of the right of ways being 80' and 60', respectively.; thence with the R/W of Brownsboro Road **N 80°26'06" W 199.99'** to a 5/8" rebar with cap LS 2206, set at a 12' undeveloped alley; thence leaving said R/W with said alley **N 29°13'06" E 105.00'** to a point on a stone wall, a mag nail having been set as a witness **S 80°26'06" E 1.00'** from the corner, a corner to Kermit Howell of record in Deed Book 5292, page 275 as recorded in the office of the Jefferson County Court Clerk's office; thence **S 80°26'06" E 86.33'** to a 5/8" rebar with cap LS 2206, set, a corner to Margaret Welch, of record in Deed Book 6106, Page 920; thence **S 29°13'06" W 26.50'** to a 5/8" rebar with cap LS 2206; thence **S 80°26'06" E 113.66'** to the center of a metal fence post at the corner of a wire fence at the R/W of Mellwood Avenue, Welch's southwest corner; thence with the R/W **S 29°13'06" W 78.50'** to the beginning; containing **0.389 acres**.

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Public Hearing Staff Report

March 2, 2006



Case:	9-72-05 & JPOP-4-05
Project Name:	L&N Wine Bar & Bistro
Location:	1765 Mellwood Avenue and 1733 Brownsboro Road (Tax Block 88F, Lots 6, 7, 9).
Owner:	Douglas and Peggy Wheeler
Applicant:	The Houston Group, Inc.
Engineer:	Classickle, Inc.
Project Size/Area:	0.388 acres
Form District:	Traditional Marketplace Corridor
Zoning District:	C-1 to C-2
Existing Uses:	Restaurant/Bar with indoor dining only, Offices, Apartment
Proposed Use:	Restaurant/Bar with indoor and outdoor dining, Offices
Jurisdiction:	Louisville Metro
Council District:	9 – Tina Ward-Pugh
Case Manager:	Aliza Tourkow, Planner II

Request

Change in zoning from C-1 Commercial to C-2 Commercial, a Joint Parking Agreement to share 8 parking spaces between the two uses on the lot, and a Joint Parking Agreement to share 12 spaces on an adjacent site, on property located at 1765 Mellwood Avenue and 1733 Brownsboro Road (Tax Block 88F, Lots 6, 7, 9), containing 0.388 acres and being in Louisville Metro.

Staff Recommendation

Staff recommends APPROVAL of the zoning change request and development plan, along with the associated binding elements contained within this report. Staff recommends APPROVAL of the Joint Parking Agreement to share 8 spaces between the two uses on the lot. Staff recommends APPROVAL of the Off-site Parking Agreement to use 12 parking spaces located at 1747 Mellwood Avenue.

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Case Summary / Background

Summary

The site presently contains two structures. Building One is a two-story historic structure that houses a 2,640 sf wine bar and bistro on the first floor, one 945 sf apartment on the second floor, and a 943 sf "buffet" area on the second floor. The present seating capacity is 100 patrons. Building Two contains a 1,488 sf office with a 1,488 sf finished basement that is presently used for meal assembly. The applicant proposes to rezone the site from C-1 to C-2 in order to add 817 sf of outdoor dining with alcoholic beverage sales and consumption beside the wine bar building, where a paved patio area presently exists. This will increase the seating capacity by 36% (36 seats), bringing the total seating available to 136 seats. Additionally, the second floor of Building One will be converted to an accounting office and storage for the wine bar. There is an existing sign that will be relocated outside of the right-of-way. It is 5' tall and 40 sf in area.

No new structures will be built and no impervious surface will be added. The area for outdoor dining has already been constructed as an outdoor amenity with landscaping around it and limestone flooring, so design guidelines and landscaping requirements do not apply to the proposal. Even so, Tree Canopy requirements have been met. The parking lot will be re-stripped per Transportation Plan Review Team's requirements. Newly striped areas that prohibit parking and encourage better circulation have been added. Staff recommends that these striped areas be converted to ILAs, for there is not much greenery within the parking lot and this would reduce the urban heat island effect, while bringing the site more into Chapter 10 compliance.

Parking Requests

39 parking spaces are required for the wine bar and bistro after TARC credit has been applied and 8 parking spaces are required for the office building after TARC credit has been applied, equaling 47 spaces. 19 parking spaces are located on the development site and 8 spaces are located on the street directly adjacent to the site, providing 27 of the 47 parking spaces.

A Joint Parking/Off-site Parking Agreement is being sought to share the parking lot between the two buildings' uses, so that only 39 parking spaces will need to be provided. The amount of parking needed for the office building is 8 spaces, so 8 spaces are requested to be jointly used between the 2 businesses. Because the office hours and the wine bar hours overlap for only 2 hours (3:00 pm to 5:00 pm – wine bar opens to patrons at 5:00 pm), with the overlap including only wine bar employees, not patrons, this request appears to be justified by the parking study provided. Binding Element #14 has been added requiring annual re-certification of the Joint Parking Agreement.

A second Joint Parking/Off-site Parking Agreement is also being requested to use 12 parking spaces located at 1747 Mellwood Avenue. This site is across

Brownsboro Road from the proposal and contains an office/warehouse. The 12 parking spaces located on the adjacent site will be used during the hours that the office/warehouse is closed (i.e. after 5:00 pm). Signage will be required on both lots directing patrons to the additional parking, per Binding Element #15.

Parking Calculations

	Building One – Wine Bar	Building Two - Office
Square feet	5,345	2976
Minimum parking required	$5345/125 = 43$	$2976/350 = 9$
TARC 10% credit	$43 - 4.3 = 39$	$9 - 0.9 = 8$
Spaces required for both uses together	$39 + 8 = 47$	
Jointly used spaces on-site	8	
Spaces that must be provided	<u>39</u>	
Spaces on-site	19	
Spaces on the street directly adjacent	8	
Off-site shared spaces	12	
Total spaces provided	$19 + 8 + 12 = \underline{39}$	

Site Context

The site is flat and contains 2 structures: an office building constructed in the 1950's-1960's and a historic home constructed in the 1880's. There are many mature trees on or adjacent to the site. There are minimal ILAs. The outdoor dining area is well landscaped and is bounded by a white picket fence. There are 2 single family residences located to the north of the site on two C-1 lots. The Rush Inn bar with apartments above is located to the east, across Mellwood Avenue. It has a very small parking lot with approximately 4 stacked parking spaces. An auto repair business and an auto sales business are located across Mellwood Avenue to the south of the site, on each corner. An office/warehouse is located beside the auto repair business to the southwest. An MSD pumping station is located to the west of the rezoning site.

The site is located in a Traditional Marketplace Corridor, where most homes in the area depend upon on-street parking as their sole parking option. There are many TARC routes in the vicinity.

Land Use / Zoning District / Form District

	Land Use	Zoning	Form District
Subject			
Existing	Restaurant/Bar with indoor dining only, Offices, Apartment	C-1	TMC
Proposed	Restaurant/Bar with indoor and outdoor dining, Offices	C-2	TMC
Surrounding			
North	Single Family Residences	C-1	TMC
South	Auto Repair	M-2 & C-2	TMC
East	Rush Inn Bar and Apartments	C-1	TMC
West	MSD Station	M-3	TMC

Background

No prior cases.

Project History

Project History	Date	Issues addressed / discussion / changes to proposal
Pre-application meeting	7/15/05	Parking
Neighborhood meeting	11/7/05	
Project submittal	12/8/05	Parking
Staff review	12/14/05	Parking
Revision submittal #1	1/4/06	Parking
Site Inspection Committee	12/16/05	Parking, On-street striping for parking, debris
LD&T review	1/12/06	Parking
Public Hearing	TBD	

Note: The following information represents staff analysis of the subject property with respect to site inspection/observation, sound planning practices, and adopted policies and regulations of the jurisdiction. Materials submitted by the applicant or their representative prior to the deadline for filing information related to cases docketed for this hearing were reviewed and specifically applied in the staff review of this request. The board is advised to consider this staff report as well as new information introduced at the hearing in formulating their decision.

Site Inspection Committee Comments:

1. Recommend that applicant stripe (pay for striping of) all spaces shown on joint parking plan within 500 feet of L & N.
2. Recommend exploration of formal shared parking agreement with business across Brownsboro Road from L & N.
3. Clean up debris from parking lot and landscaping areas forward of office building.

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LD&T Meeting January 12, 2006

Delores Collins, President of the Clifton Heights Community Council, submitted suggested binding elements that the neighborhood desires to be included on the plan. They pertain to: hours of operation of the outdoor seating area, restricting certain uses in the C-2 zoning category, and preserving the residential character of the L&N Wine Bar & Bistro building. The applicant agreed to binding elements addressing each concern.

Staff Findings

Relationship to Comprehensive Plan - Cornerstone 2020 Plan Elements:

1. **Community Form** – The Traditional Marketplace Corridor form district encourages neighborhood-serving uses, such as restaurants and specialty shops. The wine bar and bistro serves the neighborhood, but is also a destination for patrons outside of the neighborhood. Both Mellwood Avenue and Brownsboro Road are major roadways, so this corner location is desirable for the higher intensity C-2 use proposed. By adding the outdoor dining feature to the wine bar and bistro, a pedestrian friendly environment is produced, along with a sense of place. The safescape concept of “eyes on the street” is also created by the outdoor activity, which encourages pedestrian traffic. Staff supports the rezoning request, for the wine bar and bistro with outdoor dining and alcohol consumption is a compatible use within this neighborhood at this location.

The Clifton Heights Neighborhood Group has proposed Binding Element # 17, restricting the site from being used as an auto repair business, auto sales business, bingo hall, and cell tower. The applicant has agreed to this request, along with accepting the neighborhood group’s proposed Binding Element # 18, for all outdoor activities, including dining, to cease at 1:00 am. Staff proposed Binding Element #2, protecting the residential character of the historic structure housing the wine bar. These restrictions assure that the proposal does not create a nuisance and is compatible with the neighborhood.

Staff contacted Tina Ward-Pugh’s office concerning on-street striping of parking spaces along Mellwood Avenue and Brownsboro Road. Striping encourages patrons to utilize on-street spaces without the fear of being ticketed or towed. Ms. Ward-Pugh stated that she has allotted money in her district’s budget for on-street striping to occur this spring. Additionally, the 2 joint use parking agreements take advantage of underutilized parking lots, eliminating the creation of excess pavement. It also preserves the urban fabric of the neighborhood by avoiding the creation of suburban-like parking expanses. The parking study submitted for the joint use parking agreement between the two uses on the rezoning site proves that the parking needs of the proposed uses will not conflict with each other. The off-site parking agreement to use 12 parking spaces at 1747 Mellwood Avenue is valid because the office/warehouse located at that site is closed for business before the wine bar opens at 5:00 pm. Therefore,

adequate parking will be provided on-site, on the street, and on the adjacent lot containing 12 parking spaces. (1.B.7, 2.1, 2.4, 2.5, 2.10, 2.13, 2.16, 3.1, 3.7 3.24, 3.20, 7.2, 7.10)

2. **Mobility / Transportation** – Right-of-way dedication is not required for this development. Short-term bicycle spaces (bike racks) will be provided at the rear of the wine bar building, with long-term bicycle parking for employees located within the building. Better vehicular circulation throughout the parking lot will be created by re-striping the parking spaces and cross hatching turn radius areas where parking is prohibited. To better serve the site's circulation pattern and to reduce the urban heat island effect, staff recommends that all cross hatched areas be changed to ILAs (internal landscape areas), for there are presently no ILAs in the parking lot of the proposal site. (7.1, 7.4, 7.9, 7.16, 9.1, 9.2, 9.3, 9.4)

3. **Livability / Environment** – As mentioned above, staff recommends that ILAs be added to the parking lot to bring the site more into compliance with Chapter 10 of the LDC. Chapter 10 requires that any commercial zone beside a residential use have a 5' wide LBA (single family home is located to the north). Existing LBAs (landscape buffer areas) at the rear and side of the site range from a width of 1' to a width of 5'. Because impervious surface is not being added to the site, LBAs and ILAs are not required, although it is advisable for all sites to make efforts toward Chapter 10 compliance. LBAs cannot be widened because of existing parking needs and existing structures, so the only way to closer to Chapter 10 compliance is through adding ILAs. Many mature trees ring the property boundaries, but it is unclear whether or not these trees are on the subject property or on adjacent property. (13.4, 13.5, 13.6)

Relationship to Neighborhood, Small Area, Corridor or Other Plan:
Not applicable.

Standard of Review

Criteria for granting the proposed rezoning:

1. The proposed rezoning complies with the applicable guidelines and policies Cornerstone 2020; **or**
2. The existing zoning classification is inappropriate and the proposed classification is appropriate; **or**
3. There have been major changes of an economic, physical, or social nature within the area involved which were not anticipated in Cornerstone 2020 which have substantially altered the basic character of the area.

Attached Documents / Information

1. Zoning Map

Notification

The following forms of notification were provided pertaining to this proposal:

Date	Description	Recipients
12/20/05	LD&T notice	APO & Neighborhood Groups
1/27/06	Public Hearing Notice	APO & Neighborhood Groups

Standard Binding Elements - Docket 9-72-05

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The residential character of Building One shall be maintained. Changes to the following items shall not be made without prior approval of the Planning Commission's designee:
 - a) roof line
 - b) building material
 - c) porch
 - d) windows
3. The development shall not exceed 2,976 square feet of gross floor area for office use in Building Two and 5,345 square feet of gross floor area for restaurant use in Building One (817 square feet of which shall be outdoor dining and alcoholic beverage sales and consumption).
4. Signs shall be in accordance with Chapter 8 and as presented at the public hearing (40 square feet in area and 5 feet tall).
5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
6. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.

7. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
8. If a certificate of occupancy is not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
9. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
10. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
11. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
12. The materials and design of existing structures shall be substantially the same as depicted in the photographs as presented at the March 2, 2006, Planning Commission meeting.

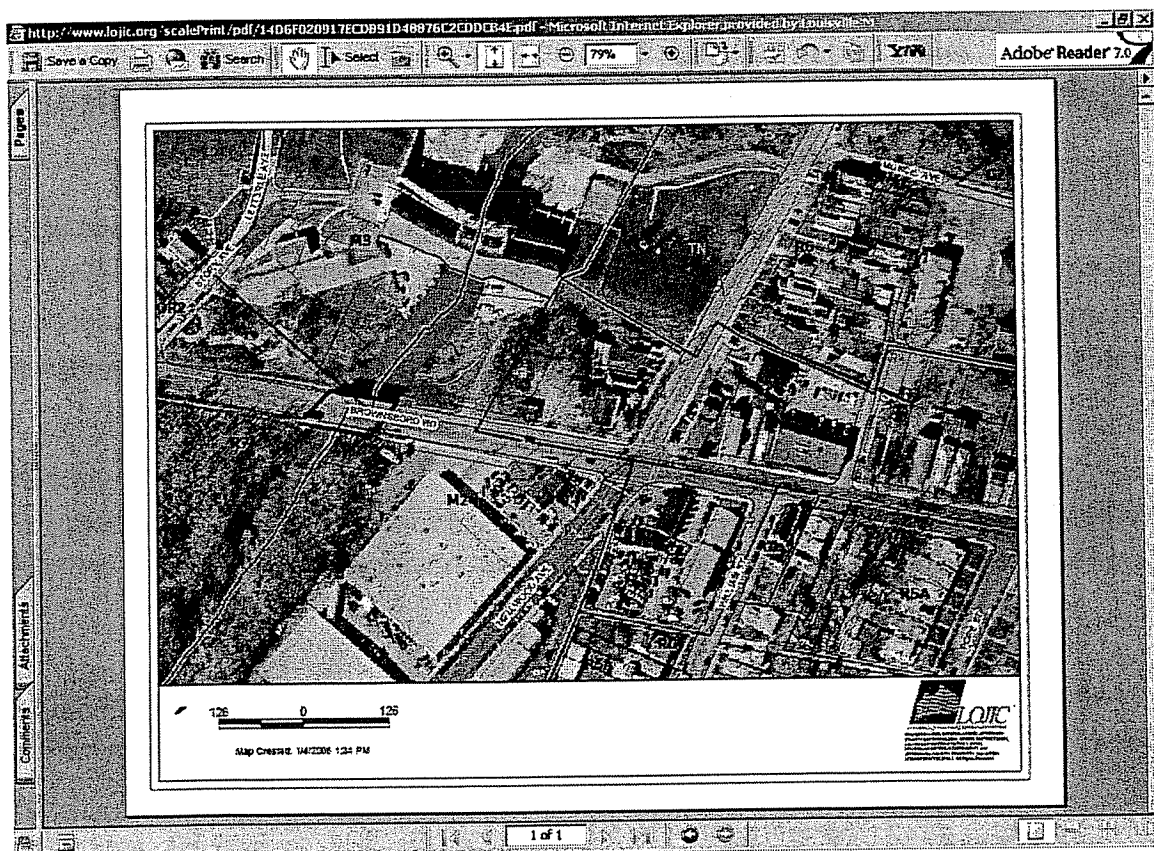
13. At the time a certificate of occupancy is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
14. A legal instrument (Joint Parking Agreement) providing for the long-term shared use of 8 parking spaces on the rezoning site, as shown on the approved general district development plan and in accordance with Section 9.1.6 Joint Use Parking, shall be submitted by the applicant, approved by the Planning Commission legal counsel, and recorded in the County Clerk's office. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services. Transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument. Annual re-certification is required.
15. A legal instrument (Off-Site Parking Agreement) providing for the long-term use of the 12 off-site parking spaces, located at 1747 Mellwood Avenue, as shown on the approved Joint Parking/Off-Site Parking Plan and in accordance with Section 9.1.5 Off-Site Parking, shall be submitted by the applicant, approved by the Planning Commission legal counsel, and recorded in the County Clerk's office. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services. Transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument. Annual re-certification is required.
16. Directional style or attached signage is required on the rezoning site parking lot and the off-site parking lot at 1747 Mellwood Avenue stating that parking is permitted on both lots 7 days per week from 5:00 pm to 1:00 am. Placement of the signage must be approved by staff.
17. The property is restricted from the following uses: auto repair business, auto sales business, bingo hall, and cell tower.
18. All outdoor activities, including dining, shall cease at 1:00 am.

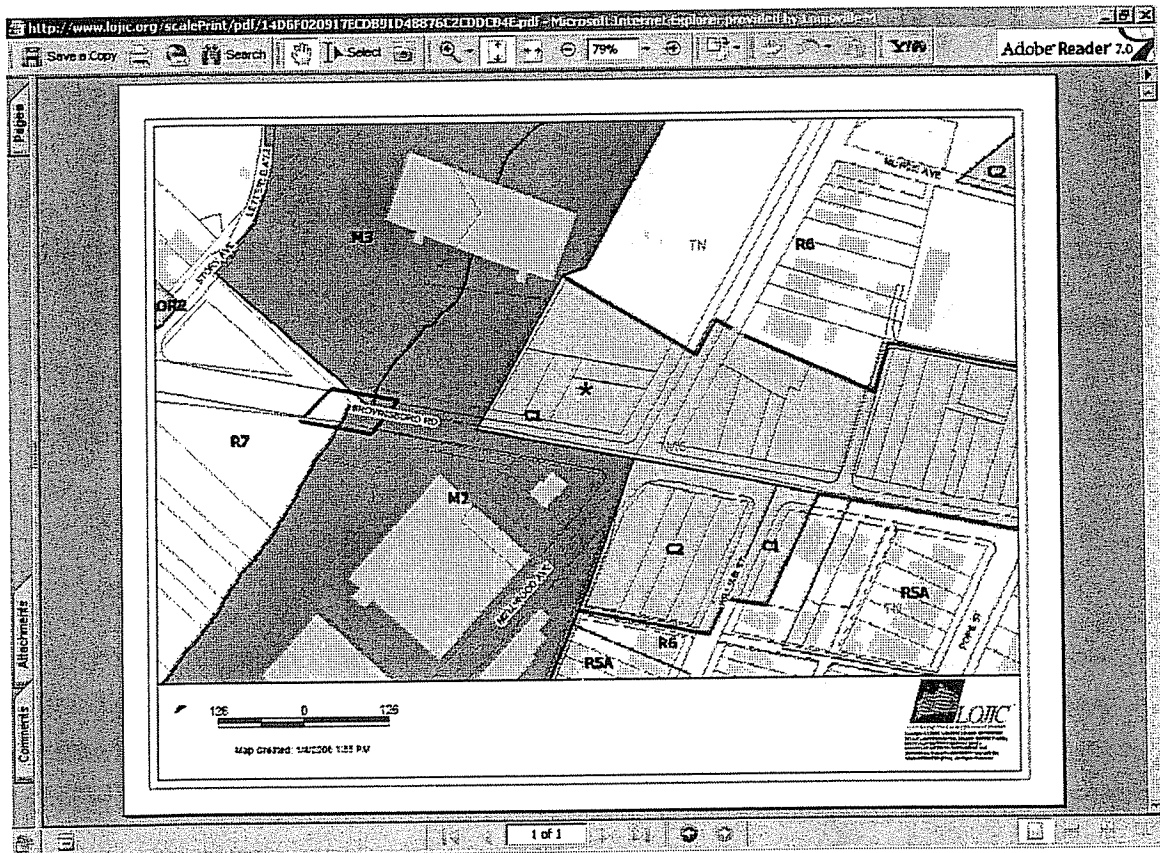
All binding elements and/or conditions of approval stated in this report are accepted in total without exception by the entity requesting approval of this (these) development item(s).

Name _____

Title _____

Date _____





Binding Elements - Docket 9-72-05

1. The development shall be in accordance with the approved district development plan, all applicable sections of the Land Development Code (LDC) and agreed upon binding elements unless amended pursuant to the Land Development Code. Any changes/additions/alterations of any binding element(s) shall be submitted to the Planning Commission or the Planning Commission's designee for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The residential character of Building One shall be maintained. Changes to the following items shall not be made without prior approval of the Planning Commission's designee:
 - a) roof line
 - b) building material
 - c) porch
 - d) windows
3. The development shall not exceed 2,976 square feet of gross floor area for office use in Building Two and 5,345 square feet of gross floor area for restaurant use in Building One (817 square feet of which shall be outdoor dining and alcoholic beverage sales and consumption).
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5. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
6. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
7. Before any permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. A minor plat or legal instrument shall be recorded consolidating the property into one lot. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of the approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - c. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
8. If a certificate of occupancy is not issued within two years of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved or an extension is granted by the Planning Commission.
9. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding

elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

10. There shall be no outdoor music (live, piped, radio or amplified) or outdoor entertainment or outdoor PA system audible beyond the property line.
11. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
12. The materials and design of existing structures shall be substantially the same as depicted in the photographs as presented at the March 2, 2006, Planning Commission meeting.
13. At the time a certificate of occupancy is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
14. A legal instrument (Joint Parking Agreement) providing for the long-term shared use of 8 parking spaces on the rezoning site, as shown on the approved general district development plan and in accordance with Section 9.1.6 Joint Use Parking, shall be submitted by the applicant, approved by the Planning Commission legal counsel, and recorded in the County Clerk's office. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services. Transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument. Annual re-certification is required.
15. A legal instrument (Off-Site Parking Agreement) providing for the long-term use of the 12 off-site parking spaces, ~~located at 1747 Melwood Avenue~~, as shown on the approved Joint Parking/Off-Site Parking Plan and in accordance with Section 9.1.5 Off-Site Parking, shall be submitted by the applicant, approved by the Planning Commission legal counsel, and recorded in the County Clerk's office. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services. Transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument. Annual re-certification is required.
16. Directional style or attached signage is required on the rezoning site parking lot and the off-site parking lot ~~at 1747 Melwood Avenue~~ stating that parking is permitted on both lots 7 days per week from 5:00 pm to 1:00 am. Placement of the signage must be approved by staff.
17. The property is restricted from the following uses: auto repair business, auto sales business, bingo hall, and cell tower.

18. All outdoor activities, including dining, shall cease at 1:00 am.

19. All ²parking spaces to be jointly used ^{at 1747} ~~at 1747~~ ~~Metwood Ave.~~ shall be restriped to delineate vehicular parking spaces within 30 days of legislative body approval. ^{ok}

All binding elements and/or conditions of approval stated in this report are accepted in total without exception by the entity requesting approval of this (these) development item(s).

Name James R. R. R.

Title Owner

Date 3-2-06

